

## **The Electrical Safety Standards in the Private Rented Sector Financial Penalty Policy**

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are designed to ensure electrical safety within the private rented sector in England by requiring landlords to have the fixed electrical installation within rented properties inspected at least every five years.

A private landlord (as defined in section 122(6) of the Housing and Planning Act 2016) who grants or intends to grant a specified tenancy must ensure that the fixed electrical installation is safe during the period of the tenancy.

The regulations set out excluded tenancies which include amongst others, registered providers of social housing, shared accommodation with a landlord or landlord's family, long leases, student halls of residence, hostels and refuges, care homes, hospitals and hospices and other accommodation relating to healthcare provision.

### **Landlord duties - testing & certification.**

Duty for first inspection and testing of the electrical installation

- a) New, specified tenancies, granted or intended to be granted on or after 1st July 2020
- b) 1st April 2021 - Existing tenancies must be inspected before this date.

Repeat inspections are required at least every 5 years (sooner if the report recommends a lesser period).

Ensure that the electrical safety standards are met during any period when the premises are occupied under a specified tenancy.

Inspections & tests must be undertaken by a competent person who is part of the electrical safety industry competent-person scheme.

The inspection report will show that the installation is one of the following:

- a) Safe and no further action is required
- b) Danger is present and there is a risk of injury (Code 1 (C1)). In this situation the cause of the danger would be rectified by the competent person before leaving the property
- c) The installation poses a potential danger (Code 2 (C2))
- d) Further investigation is required without delay (FI)
- e) Improvement to the installation is recommended (Code 3 (C3)); however, this is not sufficient to deem the installation as unsatisfactory.

Where the inspection report shows a C1, C2 or FI outcome, the landlord must ensure that suitable remedial works or investigations are undertaken. A C3 outcome is advisory and therefore works do not have to be completed.

- a) A copy of the inspection certificate must be provided by the landlord to:
- b) Each existing tenant within 28 days of the inspection
- c) A new tenant before they occupy the property, or
- d) A prospective tenant within 28 days of receiving a request for the report
- e) The Council within seven days of receiving a request for the certificate in writing

A copy of the report must be kept by the landlord until the next report is due; then a copy of the existing report should be provided to the person undertaking the next inspection.

Where the work undertaken reveals further issues that require either further remedial work or further investigation, this should be addressed within a further period of 28 days (or shorter period, where this is required).

The person completing the works should supply the landlord with a confirmation that the works have been completed (so the installation is now safe) or further work/investigation is needed. The landlord must provide a copy of this confirmation together with the original inspection certificate to each tenant and to the Council within 28 days of the work being undertaken.

Where further work or investigation is required, the requirements to complete work and provide the necessary confirmation are repeated (as per the original inspection).

### **Council duties - Remedial Notice.**

Where the Council believes that the landlord has breached one or more of their duties, (excluding provision of certificates), the Council must serve a remedial notice on the landlord within 21 days of deciding that it has reasonable grounds for service.

The notice includes:

- a) the remedial action required to be taken within 28 days of service
- b) Details of how to make representations
- c) Explanation of the penalties (including the potential maximum penalty) that may result from non-compliance.

The landlord may make written representations within 21 days, if made the notice is suspended until the representations have been considered.

The Council must consider any representations and confirm that outcome of those considerations, in writing, within seven days of the end of the representation period.

### **Landlord duties - Remedial Notice**

A landlord must comply with a remedial notice where either no representations are made or the notice is confirmed (after consideration of the representations) unless they are able to claim that they have taken all reasonable steps e.g. tenant has prevented access.

### **Council power to arrange remedial action.**

Failure to comply with a remedial notice also allows the Council to undertake remedial works in default, with the consent of the tenants. Before doing so, the Council must be satisfied on the balance of probability that there has been a breach of the remedial notice.

Before undertaking such works, the Council must serve a notice of intention to take remedial action (NIRA) on the landlord. The notice includes:

- a) The nature of the proposed remedial work
- b) The date when the work will be undertaken
- c) Information on the right of appeal against the decision to do the work

Works are to be undertaken within 28 days of the end of the remedial notice expiry date (or within 28 days after confirmation of notice, if appealed).

The tenants must be given at least 48 hours' notice of the remedial works.

### **Appeal against Council remedial works**

A landlord may appeal against a NIRA to the First-tier Tribunal (Property Chamber) within 28 days of service.

An appeal suspends the NIRA until the appeal has been determined. The tribunal may affirm, vary, or quash the NIRA.

### **Recovery of costs**

The Council may issue a demand to recover costs relating to works undertaken in accordance with the NIRA which becomes payable after 21 days from the day of issue unless an appeal is submitted.

### **Appeal against costs**

An appeal can be made to the First-tier Tribunal (Property Chamber) within 21 days of the date of issue.

### **Urgent remedial action**

Where an electrical report indicates that urgent action is required and the LHA is satisfied that the landlord is not undertaking the necessary work, they may arrange (with the consent of the tenants) for an electrician to undertake the urgent work.

The tenants must be given at least 48 hours' notice of the date to carry out the work.

The LHA must issue an urgent remedial action notice (URAN) either prior to or up to seven days from the date when the remedial action commences. The URAN includes:

- a) The nature of the urgent remedial action required
- b) The date when the urgent work is or has been started
- c) The right of appeal and the appeal period
- d) The provisions relating to the issue of financial penalties.

### **Appeal against urgent remedial action**

A landlord may appeal against a URAN to the First-tier Tribunal (Property Chamber) within 28 days of either the date that the work was started or was planned to start (whichever was the first date).

A URAN is not suspended on appeal.

The Cost recovery process is like those under a NIRA.

### **Financial penalties - notice of intention**

Where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3 (see 2.1), the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

A financial penalty may be of such amount as the authority imposing it determines (See Appendix 1); but must not exceed £30,000.

Before imposing a financial penalty a notice of intention must be served on the private landlord. The notice includes:

- a) The amount of the proposed penalty
- b) The reasons for imposing the penalty
- c) Information about the right to appeal

The landlord may make written representations within 28 days.

### **Financial penalties – final notice**

Within 28 days of expiry of the representation period the Council must decide whether to impose a financial penalty on the landlord.

If it decides to impose a penalty it must serve a final penalty notice which includes:

- a) The amount of the penalty
- b) The reasons for imposing the penalty
- c) Information about rights of appeal
- d) Consequences of failure to comply

The penalty is payable within 28 days.

The Council may, at any time, withdraw a NOI or Final notice, or reduce the penalty amount specified in a notice by doing so in writing.

### **Appeal against financial penalty**

A landlord can appeal a final notice within 28 days to the First-tier Tribunal (Property Chamber).

If appealed the final notice is suspended until withdrawn or determined.

### **Recovery of financial penalty**

The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

### **Proceeds of financial penalty**

The Council may apply the proceeds to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

### **Determination of penalty amount.**

The Council will decide the amount of penalty up to the maximum of £30,000 limit, as set within the regulations.

A penalty may be awarded under either Part A and/or Part B.

#### **PART A:**

This applies where:

- a) An electrical report indicates that C1 defects are present and where the works haven't been undertaken in accordance with the regulations.
- b) A remedial notice has been served by the Local Authority and the landlord has failed to take all reasonable steps to comply with it and the regulations have been breached.

The indicative penalty shall be determined in accordance with Council’s Civil Penalty Policy as if an offence of failing to comply with an improvement notice in respect of 1 Category 1 hazard (electrical) has occurred.

**PART B:**

This applies in respect of offences not covered by Part A. It may include for example:

- a) Failing to provide certification to tenants/prospective tenants
- b) Where the Local Authority have served a remedial notice which the Landlord has complied with.
- c) Where the landlord has failed to ensure the testing has been undertaken at regular intervals by a qualified person in accordance with the regulations but has recently complied with the regulations.

Consideration will be given to the issue of a penalty as a “repeat offender”. Instead of a scoring matrix the following indicative penalties will be used:

First offence	£Nil – Advice will be given
Second offence:	£300
Third:	£500
Fourth & subsequent	£1,000

**Considerations:**

After the indicative penalty has been determined, considerations of sections (e) –(i) will be applied together with any reductions under section (j). Please refer to the Council’s Civil Penalty Policy for detail. In brief these are:

- a) Remove any financial benefit the offender may have obtained as a result of committing the offence –The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.
- b) Multiple offenders –fine sharing in cases where there are multiple offenders.
- c) Punishment of the offender –A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- d) Deter the offender from repeating the offence –The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- e) Deter others from committing similar offences – While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has

received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

#### Reductions

- a) Level of compliance by perpetrator, their attitude in doing so, and early payment
- b) Financial hardship